

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

8 GEORGETTE MCNABB,

9 Plaintiff,

10 v.

11 UNITED STATES DEPARTMENT OF  
12 THE ARMY, et al.,

13 Defendants.

CASE NO. 12-CV-6038-RBL

ORDER

[Dkt. #10, 18]

14 Plaintiff has brought suit disputing the payment of a life insurance policy issued to her  
15 late husband, Sergeant Barett McNabb. In 2011, Plaintiff and Sgt. McNabb separated, and while  
16 the dissolution was pending, McNabb changed the beneficiary of his life insurance policy to his  
17 new girlfriend. Plaintiff argues that the Army and Department of Veterans Affairs failed to make  
18 a “good faith” effort to notify her of the change, as required by the Servicemembers’ Group Life  
19 Insurance Act (“SGLIA”), 38 U.S.C. § 1965 *et seq.* She argues the changes are therefore invalid,  
20 and she is the proper recipient of the funds. Defendants have moved to dismiss, arguing that the  
21 Court lacks subject matter jurisdiction, and that in any event, McNabb’s changes to the policy  
22 are valid, regardless of notice.

## I. BACKGROUND

#### **A. Factual Allegations**

Plaintiff and Sgt. McNabb married in 1996. In 1998, McNabb joined the Army and served until his death in 2012.

5 On November 18, 2009, McNabb designated Plaintiff as the sole beneficiary of his  
6 SGLIA life-insurance policy. (Compl. ¶ 2.6.) In March 2011, Plaintiff and McNabb separated,  
7 the latter moving in with Defendant Smith, a superior officer in the United States Army. *Id.* ¶  
8 2.8. In August 2011, McNabb filed for dissolution of his marriage. *Id.* ¶ 2.8. During the  
9 dissolution, he was twice held in contempt of the court’s order for him to provide spousal  
10 support for Plaintiff. *Id.* ¶ 2.11.

11 On February 22, 2012, McNabb changed the policy's beneficiary, listing his son, Smith,  
12 and her two children—removing Plaintiff. *Id.* ¶¶ 2.12-13. At the same time, McNabb submitted a  
13 Record of Emergency Data to the Army, in which he listed Plaintiff's address as "UNKNOWN,  
14 Centralia, WA US 00000." *Id.* ¶ 2.14. Plaintiff alleges that McNabb knew her correct address,  
15 evidenced by a Christmas card he sent to their son at the correct address. *Id.* ¶ 2.15. The Army  
16 mailed notice of the beneficiary change to the "unknown" address, and consequently, Plaintiff  
17 was not notified.

18 In June 2012, McNabb died in Afghanistan. Plaintiff sent letters to the Army and the  
19 Department of Veterans Affairs, claiming benefits under the policy. On July 10, 2012, Plaintiff  
20 filed a claim for benefits with Defendant Prudential, the provider under the policy. Prudential  
21 denied the claims because Plaintiff was not a listed beneficiary.

On August 16, 2012, the Army responded to Plaintiff's letters stating the 2012 designation was valid regardless of notification to Plaintiff. *Id.* ¶ 2.24.

## B. Plaintiff's Claims

Plaintiff alleges that the Army violated SGLIA by failing to make a good faith effort to notify Plaintiff of the beneficiary changes. 38 U.S.C. § 1967(f)(3)-(4).

Plaintiff alleges that the VA breached its contract to determine coverage under the SGLIA policy and by failing to approve coverage. *Id.* ¶ 5.3.

Lastly, Plaintiff alleges that Prudential breached its contract to provide death benefits in the amount of \$400,000.

### **C. Defendants' Motions to Dismiss**

The Army and the VA contend that the Court lacks subject matter jurisdiction over the claims because Plaintiff has alleged no breach of an “illusory” obligation. *See generally* Defs.’ Mot. to Dismiss at 4, Dkt. #10. Further, Defendants argue that McNabb’s beneficiary designations are valid, regardless of the failure to notify Plaintiff. *Id.*

Similarly, Prudential contends that failure to notify Plaintiff does not invalidate the beneficiary designation. Therefore, Plaintiff is not entitled to death benefits. *See generally* Dkt. #18 (citing Dkt. #10).

## II. DISCUSSION

#### **A. Subject Matter Jurisdiction**

Defendants argue that Plaintiff alleges a violation of an “illusory” notification obligation under SGLIA, an obligation insufficient to support jurisdiction under 38 U.S.C. § 1975.

Under § 1975, “[t]he district courts of the United States shall have original jurisdiction of any civil action or claim against the United States” brought under SGLIA. Thus, a plaintiff must allege “breach of an explicit or implicit duty under the SGLI subchapter.” *Denton v. U.S.*, 638

1 F.2d 1218, 1220 (9th Cir. 1981). Otherwise, such claims lie against the insurer, rather than the  
 2 United States. *See* 38 C.F.R. § 9.13. Plaintiff does, however, allege the violation of an explicit  
 3 duty.

4 SGLIA requires written notification to a spouse of certain beneficiary changes:

5 In the case of a member who is married and who is insured . . . , if the member makes a  
 6 [policy] designation [under SGLIA] . . . of any person other than the spouse or a child of  
 7 the member as the beneficiary of the member for any amount of insurance . . . , the  
 Secretary concerned shall notify the member's spouse, in writing, that such a beneficiary  
 designation has been made . . . .

8 38 U.S.C. § 1967(f)(3). The secretary satisfies this obligation by making “a good faith  
 9 effort to provide the required information to the spouse at the last address of the spouse in  
 10 the records . . . .” *Id.* § 1967(f)(4).

11 Plaintiff alleges that the Army and the VA breached these obligations. Because Plaintiff  
 12 alleges a breach of an express obligation, her allegations are sufficient to support subject matter  
 13 jurisdiction under § 1975.

#### 14       **B. Notification**

15 Defendants argue that, regardless of jurisdiction, Plaintiff cannot state a claim because  
 16 McNabb’s beneficiary changes are valid—even absent notification.

17 To survive a 12(b)(6) motion, a complaint should be liberally construed in favor of the  
 18 plaintiff and its factual allegations taken as true. *See, e.g., Oscar v. Univ. Students Co-Operative*  
 19 *Ass’n*, 965 F.2d 783,785 (9th Cir. 1992). The Supreme Court has explained that “when  
 20 allegations in a complaint, however true, could not raise a claim of entitlement to relief, this  
 21 basic deficiency should be exposed at the point of minimum expenditure of time and money by  
 22 the parties and the court.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (internal  
 23 citation and quotation omitted).

1 Defendants are correct. Under SGLIA, beneficiary changes are valid regardless of  
2 notification: “Failure to provide a notification required under this subsection in a timely manner  
3 does not affect the validity of any . . . beneficiary designation.” 38 U.S.C. § 1967(f)(4). Thus,  
4 even assuming Defendants failed to make a good-faith effort to notify Plaintiff, McNabb’s  
5 beneficiary changes are valid. Congress saw fit to give servicemembers the “absolute right to  
6 designate the policy beneficiary,” and “[t]hat right is personal to the member alone.” *Ridgway v.*  
7 *Ridgway*, 454 U.S. 46, 59–60 (1981). In doing so, they mandated notification, but provided no  
8 teeth to that mandate.

Because McNabb's designations are valid, the Court must conclude that Plaintiff's claim fail as a matter of law.

### III. CONCLUSION

12 For the reasons stated above, the Court **DENIES** the motion as to lack of subject matter  
13 jurisdiction and **GRANTS** the motions as to failure to state a claim upon which relief can be  
14 granted and dismisses Plaintiff's claims with prejudice.

16 Dated this 14<sup>th</sup> day of May, 2013.

Ronald B. Leighton  
RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE